

REMARKS

I. Introduction

With the cancellation of claims 3, 4, 9 and 10, claims 1, 2 and 5 to 8 are pending in the present application. In view of the foregoing amendments and the following remarks, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

Applicant thanks the Examiner for consideration of the Information Disclosure Statement, PTO-1449 paper and cited reference filed on February 11, 2004.

II. Rejection of Claim 10 Under 35 U.S.C. § 103(a)

Claim 10 was rejected under 35 U.S.C. § 103(a) as obvious over the combination of U.S. Patent No. 5,625,918 ("Kieson et al.") and WO 98/06316. Claim 10 has been canceled herein without prejudice thus rendering this rejection moot.

III. Rejection of Claims 1, 2, 4 to 7 and 9 to 10 Under 35 U.S.C. § 103(a)

Claims 1, 2, 4 to 7 and 9 to 10 were rejected under 35 U.S.C. § 103(a) as obvious over the combination of Kieson et al., U.S. Patent No. 5,896,613 ("Courtney et al.") and WO 98/06316. As an initial matter, claims 4, 9 and 10 have been canceled herein without prejudice thus rendering the rejection of these claims moot. Applicant respectfully submits the present claims, as amended herein, are allowable for at least the following reasons.

Claim 1 relates to a wet floor wiping device. Claim 1 recites that the wiping device includes a mop made of absorbent material, a mop frame including a center carrier piece attached to a handle and two quadrilateral shaped mop carrier wings. Claim 1 recites that each wing is pivotably mounted by a hinge edge of the center carrier piece. Claim 1 further recites that the carrier wings have inner surfaces which carry the mop and which can be pressed against each other by way of squeezing. Claim 1 further recites that at least one (8) of two side edges (8, 9) extending from the hinge edge (5) is slanted toward the opposite side edge (9). Claim 1 has been amended to recite that the carrier wings include water drain grooves (11), which run at an angle to the hinge edge (5) toward the slanted side

edge (8). No new matter has been added. See, for example, Figure 4 and original claims 4 and 6.

Courtney et al. purportedly relate to a floor mop with a scrub strip. Courtney et al. state that the mop includes an elongated handle 12, a mop head 14 and an actuation member 16. See col. 2, lines 36 to 39. Mop head 14 is stated to include first and second presser plates 18, 20 mounted to a mounting plate 22. See col. 2, lines 42 to 44.

Kieson et al. purportedly relate to a multiple head wringer mop. Kieson et al. state that the mop includes an handle 10 and a sponge plate 52. See col. 3, lines 1 to 3. Further, sponge plate 52 is stated to include two triangular shaped sponge plates. See col. 4, lines 58 to 65.

WO 98/06316 purportedly relates to a mop squeezing device for a mop. The mop is stated to have longitudinal channels 87 which extend the length of the mop head. See p. 12, lines 12 to 14.

The Office Action admits that Kieson et al. and Courtney et al. do not disclose water drain grooves and relies on WO 98/06316 for its teaching of such grooves. However, nowhere do any of the references cited disclose, or even suggest, the specific configuration of these grooves on a mop having folding carrier wings. More specifically, nowhere does the combination of Kieson et al., Courtney et al. and WO 98/06316 disclose carrier wings including water drain grooves which run at an angle to the hinge edge toward the slanted side edge, as recited in amended claim 1. Therefore, the combination of Kieson et al., Courtney et al. and WO 98/06316 does not disclose all of the limitations of amended claim 1.

In rejecting a claim under 35 U.S.C. § 103(a), the Examiner bears the initial burden of presenting a prima facie case of obviousness. In re Rijckaert, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish prima facie obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. In re Vaeck, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). Second, there must be a reasonable expectation of success. In re Merck & Co., Inc., 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim limitations. In re Royka,

490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). As indicated above, the combination of Kieson et al., Courtney et al. and WO 98/06316 does not disclose carrier wings including water drain grooves which run at an angle to the hinge edge toward the slanted side edge, as recited in amended claim 1. Therefore, the combination of Kieson et al., Courtney et al. and WO 98/06316 does not render obvious claim 1.

The Office Action alleges that it would have been obvious to modify the device of Courtney et al. and Kieson et al. to have drain grooves within the carrier wing such as the ones that WO 98/06316 teach in order to assist in draining of the mopping liquid. It is respectfully submitted that the cases of In re Fine, supra, and In re Jones, 21 U.S.P.Q.2d 1941 (Fed. Cir. 1992), make plain that the Office Action's generalized assertions that it would have been obvious to modify or combine references do not properly support a § 103 rejection. It is respectfully submitted that those cases make plain that the Office Action reflects a subjective "obvious to try" standard, and therefore does not reflect the proper evidence to support an obviousness rejection based on the references relied upon. In particular, the Court in the case of In re Fine stated that:

The PTO has the burden under section 103 to establish a *prima facie* case of obviousness. It can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references. This it has not done. . . .

Instead, the Examiner relies on hindsight in reaching his obviousness determination. . . . One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.

In re Fine, 5 U.S.P.Q.2d at 1598 to 1600 (citations omitted; italics in original; emphasis added). Likewise, the Court in the case of In re Jones stated that:

Before the PTO may combine the disclosures of two or more prior art references in order to establish *prima facie* obviousness, there must be some suggestion for doing so, found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. . . .

Conspicuously missing from this record is any evidence, other than the PTO's speculation (if it be called evidence) that one of ordinary skill . . . would have been motivated to

make the modifications . . . necessary to arrive at the claimed [invention].

In re Jones, 21 U.S.P.Q.2d at 1943, 1944 (citations omitted; italics in original).

That is exactly the case here since it is believed and respectfully submitted that the present Office Action offers no evidence whatsoever, but only conclusory hindsight, reconstruction and speculation, which these cases have indicated does not constitute evidence that will support a proper obviousness finding.

Unsupported assertions are not evidence as to why a person having ordinary skill in the art would be motivated to modify or combine references to provide the claimed subject matter of the claims to address the problems met thereby. Accordingly, the Office must provide proper evidence of a motivation for modifying or combining the references to provide the claimed subject matter. Merely stating that it would have been obvious to incorporate the drain grooves as taught by WO 98/06316 does not render it obvious to incorporate drain grooves having the specific configuration as recited in claim 1, namely grooves that run at an angle to the hinge edge (5) toward the slanted side edge (8).

The Federal Circuit in the case of In re Kotzab has made plain that even if a claim concerns a “technologically simple concept” -- which is not the case here -- there still must be some finding as to the “specific understanding or principle within the knowledge of a skilled artisan” that would motivate a person having no knowledge of the claimed subject matter to “make the combination in the manner claimed,” stating that:

In this case, the Examiner and the Board fell into the hindsight trap. The idea of a single sensor controlling multiple valves, as opposed to multiple sensors controlling multiple valves, is a technologically simple concept. With this simple concept in mind, the Patent and Trademark Office found prior art statements that in the abstract appeared to suggest the claimed limitation. But, there was no finding as to the specific understanding or principle within the knowledge of a skilled artisan that would have motivated one with no knowledge of Kotzab's invention to make the combination in the manner claimed. In light of our holding of the absence of a motivation to combine the teachings in Evans, we conclude that the Board did not make out a proper prima facie case of obviousness in rejecting [the] claims . . . under 35 U.S.C. Section 103(a) over Evans.

In re Kotzab, 55 U.S.P.Q.2d 1313, 1318 (Fed. Cir. 2000) (emphasis added). Again, it is believed that there have been no such findings.

Therefore, for all the foregoing reasons, withdrawal of the 35 U.S.C. §103(a) rejection and allowance of claim 1 is respectfully requested.

As for claims 2 and 5 to 7, which ultimately depend from claim 1 and therefore include all of the limitations of claim 1, it is respectfully submitted that the combination of Kieson et al., Courtney et al. and WO 98/06316 does not render obvious these dependent claims for at least the same reasons provided above in support of the patentability of claim 1. In re Fine, *supra*. Therefore, withdrawal of the 35 U.S.C. § 103(a) rejection and allowance of claims 2 and 5 to 7 are respectfully requested.

IV. Rejection of Claims 1, 2, 4 to 7 and 9 to 10 Under 35 U.S.C. § 103(a)

Claims 1, 2, 4 to 7 and 9 to 10 were rejected under 35 U.S.C. § 103(a) as being obvious over the combination of Kieson et al., U.S. Patent No. 3,224,025 (“Altrock”) and WO 98/06316. As an initial matter, claims 4, 9 and 10 have been canceled herein without prejudice thus rendering the rejection of these claims moot. Applicant respectfully submits the present claims, as amended herein, are allowable for at least the following reasons.

Altrock purportedly relates to a scrubbing and polishing device. The scrubbing and polishing device is stated to include a handle 1 and a sponge working element 9.

Nowhere does the combination of Kieson et al., Altrock and WO 98/06316 disclose carrier wings including water drain grooves which run at an angle to the hinge edge toward the slanted side edge, as recited in amended claim 1. Altrock does not disclose water drain grooves, let alone water drain grooves having the specific configuration recited in claim 1. Therefore, Altrock does not remedy the above detailed deficiencies of Kieson et al. and WO 98/06316. Nor is Altrock relied upon by the Examiner to remedy these deficiencies. Therefore, the combination of Kieson et al., Altrock and WO 98/06316 does not render obvious claim 1. Accordingly, withdrawal of the 35 U.S.C. § 103(a) rejection and allowance of claim 1 is respectfully requested.

As for claims 2 and 5 to 7, which ultimately depend from claim 1 and therefore include all of the limitations of claim 1, it is respectfully submitted that the

combination of Kieson et al., Altrock and WO 98/06316 does not render obvious these dependent claims for at least the same reasons provided above in support of the patentability of claim 1. In re Fine, supra. Therefore, withdrawal of the 35 U.S.C. § 103(a) rejection and allowance of claims 2 and 5 to 7 are respectfully requested.

V. Allowed Claims

Applicant hereby acknowledges and thanks the Examiner for the allowance of claim 8.

VI. Conclusion

Applicant respectfully submits that all of the pending claims of the present application are now in condition for allowance. Prompt reconsideration and allowance of the present application are therefore earnestly solicited.

Respectfully submitted,

Dated: July 14, 2004


KENYON & KENYON
By: Richard M. Rosati
Reg. No. 31,792

One Broadway
New York, New York 10004
(212) 425-7200

CUSTOMER NO. 26646